U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-P-G-

DATE: FEB. 12, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a physician specializing in cardiology, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) § 203(b)(2), 8 U.S.C. § 1153(b)(2). The Director, Nebraska Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The Director found that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the Petitioner has not established that a waiver of a job offer would be in the national interest. On appeal, the Petitioner submits a brief and additional evidence.

I. LAW

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
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> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

II. ISSUES

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." *Matter of New York State Dep't of Transp.* (*NYSDOT*), 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must demonstrate that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must show that she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

The Petitioner has established that her work as a physician is in an area of substantial intrinsic merit. It remains, then, to determine whether the proposed benefits of the Petitioner's work will be national in scope and whether she will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Although the national interest waiver hinges on prospective national benefit, the petitioner must show that her past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the petitioner, rather than to facilitate the entry of an individual with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.* Furthermore, eligibility for the waiver must rest with the petitioner's own qualifications rather than with the position sought. Assertions regarding the overall importance of a petitioner's area of expertise cannot suffice to establish eligibility for a national interest waiver. *Id.* at 220. At issue is whether the petitioner's contributions in the field are of such significance that she merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification she seeks. A petitioner must exhibit a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

III. FACTS AND ANALYSIS

A. National in Scope

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on September 8, 2014. At the time of filing, the Petitioner was working as "a house staff physician trainee in the

Accredited Cardiology postgraduate fellowship training program" at The Petitioner indicated that her research in the field of cardiology "has widespread applications" and is in the national interest of the United States. The second prong of the *NYSDOT* national interest analysis requires that the benefit arising from the Petitioner's work will be national in scope. The Director determined that the Petitioner had not met this requirement. The benefit from her cardiology research has national scope, however, as the results from such research are disseminated to other physicians through conferences and medical journals. Accordingly, we find that the prospective benefit of the Petitioner's work is national in scope, and the Director's determination on this issue is withdrawn.

B. Serving the National Interest

It remains, then, to determine whether the Petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. The Director determined that the Petitioner's impact and influence on her field did not satisfy the third prong of the *NYSDOT* national interest analysis.

The record includes documentation of the Petitioner's published and presented work, her "Fellow In Training" membership in the medical training credentials, and a May 2013 grant of $3,000 from for her project entitled The Petitioner also submitted various reference letters discussing her work in the field. Although we discuss only a sampling of the letters submitted in support of the petition, we have reviewed and considered each one.

Assistant Professor of Medicine in the Division of Cardiovascular Sciences at identified two conference papers that he coauthored with the Petitioner which were presented at the 2014 meeting. asserted that their paper assessing the impact of on outcomes of aortic valve surgery "shed light on novel prognostic factors in patients undergoing valve surgeries." In addition, noted that their paper concerning the in patients with valvular heart disease was "unique" in that it was "only the third case reported so far." In regard to the Petitioner's published and presented work, there is no presumption that every published article or conference presentation demonstrates influence on the field as a whole; rather, the Petitioner must document the actual impact of her article or presentation. In this instance, there is no evidence showing that once disseminated through publication or presentation, the Petitioner's aforementioned cardiology research has garnered a significant number of citations or that her findings have otherwise influenced the field as a whole.

With respect to the documentation indicating that the Petitioner has presented her findings at various other cardiology meetings and medical conferences, we note that many professional fields regularly

[1] As a member of house staff, the Petitioner was a physician engaged in specialty training who cares for patients under the direction and supervision of the attending staff.

hold meetings and conferences to present new work, discuss new findings, and to network with other professionals. Professional associations, educational institutions, healthcare organizations, employers, and government agencies promote and sponsor these meetings and conferences. Although presentation of the Petitioner's work demonstrates that she shared her original findings with others, there is no documentary evidence showing, for instance, frequent independent citation of her work, or that her findings have otherwise influenced the field of cardiology at a level sufficient to waive the job offer requirement.

Assistant Professor, Division of Cardiology, indicated that the Petitioner has "published exceptional research with regard to arrhythmias and conduction system of the heart" and reported on non-compaction cardiomyopathy, but did not provide specific examples of how the Petitioner's work has affected treatment practices at cardiac care facilities or has otherwise influenced the field as a whole. While the Petitioner's medical research has value, any research must be original and likely to present some benefit if it is to receive funding and attention from the medical or scientific community. In order for a university, publisher or grantor to accept any research for graduation, publication or funding, the research must offer new and useful information to the pool of knowledge. Not every cardiology fellow who performs original research that adds to the general pool of knowledge in the field inherently serves the national interest to an extent that is sufficient to waive the job offer requirement.

also discussed the Petitioner's current research concerning explained that the "fear of experiencing a shock is perennial in the minds of patients who have defibrillators" and that some patients' anxiety caused them to develop of abnormal heart rhythms, which resulted in shocks. stated the Petitioner's "study aims to modify this cycle of shock and anxiety through the use of and that her work "would be a great pathbreaker in the management of patients," but there is no documentary evidence showing that the Petitioner's work has already had these effects and influenced the field as a whole. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). expectations regarding the possible future impact of the Petitioner's study is not evidence of her eligibility at the time of filing.

a private practice nephrologist with Iowa, described the Petitioner's research concerning the "impact of in patients with heart failure," as "an original approach to the assessment of patients with heart failure. . . . This identification of a new and inexpensive biomarker like helps in predicting mortality and the rate of recurrent hospitalizations in patients with heart failure." While mentioned the Petitioner's approach of using the level to predict a cardiac patient's mortality and recurrent hospitalization, he did not provide specific examples of how the Petitioner's findings have altered patient assessment procedures in the medical field or have otherwise had an impact on the field of cardiology as a whole.

In addition, discussed the Petitioner's case series on inhalational beta agonists and their association with lactic acidosis that was published in the

and presented at the asserted that identifying the association between inhalational beta agonists and lactic acidosis "plays a crucial role in management of asthmatic patients who present with acidosis" and that the Petitioner's "research significantly affected our management in identifying the causative condition of lactic acidosis in asthmatic patients." In response to the Director's request for evidence (RFE), the Petitioner submitted copies of two articles citing to the Petitioner's article entitled "Inhalational beta agonist induced lactic acidosis," but she has not established that the submitted citations are indicative of impact on the field as a whole. Furthermore, the Petitioner has not provided any documentary evidence showing that her work has affected diagnostic or treatment protocols at various medical centers with corresponding improvement in patient outcomes, or has otherwise influenced the field as a whole.

Regarding the Petitioner's contributions to medicine and patient care for those at risk of heart failure, , a senior fellow in the Division of Endocrinology and Metabolism at , mentioned that the Petitioner's work has elaborated on the role of low levels of albumin as a strong predictor of hospitalization and death. further stated that the Petitioner's findings "provided avenues for physicians and hospitals to include this as a valuable tool in identifying and try [*sic*] ameliorating the risk in persons who are at the highest risk for hospitalization, readmission and death," but there is no evidence indicating that the Petitioner's work was implemented as a diagnostic tool at various medical centers, has been frequently cited by others in the cardiology field, or has otherwise affected the field at a level sufficient to waive the job offer requirement.

also asserted that "[t]he aging of the U.S. population is resulting in a substantial increase in demand for general cardiology services. We are currently facing a shortage of cardiologists (heart specialists)." Similarly, multiple letters submitted in response to the RFE indicated that the Petitioner has provided care to medically underserved patients at the and The U.S. Department of Labor addresses assertions of worker shortages through the labor certification process, and therefore an asserted shortage alone is not sufficient to demonstrate eligibility for the national interest waiver. *See NYSDOT*, 22 I&N Dec. at 218. In addition, the exception for physicians at section 203(b)(2)(B)(ii) of the Act has specific provisions for those practicing in medically underserved areas or at Veterans Affairs facilities, outlined at 8 C.F.R. § 204.12; however, a petitioner does not qualify for the waiver just by asserting that there is a lack of physicians in her specialty or geographic area.[2]

[2] Section 203(b)(2)(B)(ii) of the Act describes an alternative waiver for certain physicians who agree to work in an area designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs. The waiver is limited to certain physicians who follow specific requirements set forth in the regulation at 8 C.F.R. § 204.12. The Petitioner has not addressed or attempted to meet any of these regulatory requirements. Furthermore, the Petitioner's initial submission and response to the RFE specifically requested classification pursuant to section 203(b)(2)(B)(i) of the Act.

[redacted] Chief of the Division of Cardiology, [redacted] stated:

> [S]everal of [the Petitioner's] articles have been published in peer reviewed journals such as the [redacted] and the [redacted]. She has had oral presentations at the annual national meeting of the [redacted] and poster presentations at the national annual meeting of the [redacted]

[redacted] mentioned the Petitioner's published and presented work, but there is no evidence showing that the Petitioner's findings are frequently cited by independent researchers or have otherwise affected the field as a whole. A substantial number of favorable independent citations for an article is an indicator that other researchers are familiar with the work and have been influenced by it. A lack of citations, on the other hand, is generally not probative of an article's impact in the field. In this matter, the Petitioner has submitted only three independent cites to her body of published and presented work.

The Petitioner submitted letters of varying probative value. We have addressed the specific assertions above. Generalized conclusory assertions that do not identify specific contributions or their impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). In addition, uncorroborated assertions are insufficient. *See Visinscaia v. Beers*, 4 F.Supp.3d 126, 134-35 (D.D.C. 2013) (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field); *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable"). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner's eligibility. *Id. See also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). As the submitted reference letters did not establish that the Petitioner's work has influenced the field as a whole, they do not demonstrate her eligibility for the national interest waiver.

On appeal, the Petitioner submits an article entitled [redacted] but she is not listed as an author and there is no indication that the article cites to her work. The Petitioner asserts that the article shows that "the impact of her research will prospectively benefit the nation as a whole." Although the article demonstrates that the Petitioner's current pilot study has intrinsic merit and could provide benefits that are national scope, information concerning the prospective benefit of a project cannot by itself establish that an individual advances the national interest just by engaging in the endeavor. *NYSDOT*, 22 I&N Dec. at 217. We do not dispute the importance of a research study aimed at

reducing shock anxiety in [redacted] recipients by utilizing [redacted] At issue in this matter, however, is whether the Petitioner's individual contributions in the field are of such significance that she merits the special benefit of a national interest waiver.

IV. CONCLUSION

Considering the letters and other evidence in the aggregate, the record does not establish that the Petitioner's work has influenced the field as a whole or that she will otherwise serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. The Petitioner has not shown that her past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification he seeks.

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. Although a petitioner need not demonstrate notoriety on the scale of national acclaim, she must have "a past history of demonstrable achievement with some degree of influence on the field as a whole." *NYSDOT*, 22 I&N Dec. at 219, n.6. On the basis of the evidence submitted, the Petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of R-P-G-*, ID# 16042 (AAO Feb. 12, 2016)